

AMENDED IN SENATE APRIL 27, 2015

AMENDED IN SENATE APRIL 14, 2015

**SENATE BILL**

**No. 286**

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**Introduced by Senator Hertzberg**

February 19, 2015

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An act to amend Section 365.1 of, and to add Section 395.5 to, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 286, as amended, Hertzberg. Electricity: direct transactions.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable

total kilowatthour limit established, as specified, for each electrical corporation.

The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified.

This bill would require the commission to adopt and implement a schedule that implements a 2nd phase-in period for expanding direct transactions for individual retail nonresidential end-use customers over a period of not more than 3 years, raising the allowable limit of kilowatthours that can be supplied by other providers in each electrical corporation's distribution service territory to ~~2 times~~ *8,000 gigawatt hours above* the amount determined by the commission for the first phase-in period. The bill would require the commission to ensure that 51% of the new direct transactions are for electricity products from eligible renewable energy resources. The bill would require that an electrical corporation continue to provide direct access customers with support functions, as specified, through its own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed under contract with the electrical corporation. The bill would prohibit an electric service provider from offering consolidated billing beginning January 1, 2016.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the operation of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) As the state's electrical system evolves to include more  
4 electricity generated by eligible renewable energy resources and  
5 distributed generation, electrical corporations must continue to  
6 facilitate safe and reliable transactions for electricity. Whether it  
7 comes from efficient natural gas powerplants, large wind or solar  
8 facilities, or customer-owned generation, including rooftop  
9 photovoltaics, fuel cells, or combined heat and power systems, the  
10 role of electrical corporations will be to ensure that electricity  
11 moves from suppliers to customers. In effect, the electrical  
12 corporations will become transmission and distribution companies,  
13 connecting customers with the electrical mix they want when and  
14 where they need it.

15 (b) California already has a few examples for this business  
16 model, including community choice aggregation and direct access.  
17 Direct access allows a customer to receive electricity through a  
18 direct transaction with an electric service provider, rather than  
19 from the electrical corporation. The electricity is delivered over  
20 the electrical corporation's transmission and distribution grid and  
21 the direct access customer pays the utility for providing  
22 transmission and distribution service.

23 (c) Direct access was suspended in California in 2001, despite  
24 not being a contributing component to the market manipulation,  
25 blackouts, and price spikes that led to the energy crisis of 2000–01.  
26 In 2010, the right of individual retail nonresidential end-use  
27 customers to acquire electric service through a direct transaction  
28 was reopened, but subject to limitations on the amount of electricity  
29 that could be delivered through those transactions.

30 (d) Direct access customers currently pay charges for electrical  
31 grid maintenance and pay nonbypassable charges on the  
32 distribution of electricity to support public purpose programs,  
33 including the California Alternate Rates for Energy program, which  
34 supports affordable electric service for low-income customers, and  
35 energy efficiency programs. Other providers of electric service,

1 including electric service providers and community choice  
2 aggregators, are required to follow the same laws, rules, and  
3 regulations as electrical corporations with respect to resource  
4 adequacy (Section 380 of the Public Utilities Code), procurement  
5 of electricity pursuant to the California Renewables Portfolio  
6 Standard Program (Article 16 (commencing with Section 399.11)  
7 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code),  
8 and for reducing emissions of greenhouse gases pursuant to the  
9 California Global Warming Solutions Act of 2006 (Division 25.5  
10 (commencing with Section 38500) of the Health and Safety Code).

11 (e) The Public Utilities Commission is required to ensure local  
12 area reliability needs for the benefit of both bundled and unbundled  
13 electric service customers. If the commission determines that new  
14 resources are needed for reliability, the costs are to be shared  
15 equitably, on a fully nonbypassable basis, amongst all customers,  
16 whether the customer receives their electricity from the electrical  
17 corporation, a community choice aggregator, or an electric service  
18 provider. The cost allocation mechanism ensures that there is no  
19 cost shift to bundled customers of the electrical corporation.

20 (f) A growing number of businesses are recognizing the  
21 importance of managing their energy supplies and are seeking  
22 more control over their energy management decisions. Many of  
23 these businesses also want options to contract for electricity, with  
24 up to 100 percent of that electricity coming from eligible renewable  
25 energy resources. However, because of the statutory limitations  
26 placed upon direct transactions, most businesses lack the means  
27 and necessary tools to make cost-effective energy decisions, which  
28 makes California less business friendly than other states with more  
29 direct access options.

30 (g) Given high demand for direct transactions, it is in the interest  
31 of the state to expand the right to direct access opportunities,  
32 especially to provide options for acquiring electricity from  
33 renewable sources of generation.

34 SEC. 2. Section 365.1 of the Public Utilities Code is amended  
35 to read:

36 365.1. (a) Except as expressly authorized by this section, and  
37 subject to the limitations in subdivisions (b) and (c), the right of  
38 retail end-use customers pursuant to this chapter to acquire service  
39 from other providers is suspended until the Legislature, by statute,  
40 lifts the suspension or otherwise authorizes direct transactions. For

purposes of this section, “other provider” means any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider, as defined in Section 218.3. “Other provider” does not include a community choice aggregator, as defined in Section 331.1, and the limitations in this section do not apply to the sale of electricity by “other providers” to a community choice aggregator for resale to community choice aggregation electricity consumers pursuant to Section 366.2.

(b) (1) During the first phase-in period for expanding access to direct transactions, the commission shall allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation’s distribution service territory, up to a maximum allowable total kilowatthours annual limit. During this first phase-in period for expanding access to direct transactions, the maximum allowable annual limit shall be established by the commission for each electrical corporation at the maximum total kilowatthours supplied by all other providers to distribution customers of that electrical corporation during any sequential 12-month period between April 1, 1998, and the effective date of this section. Within six months of the effective date of this section, or by July 1, 2010, whichever is sooner, the commission shall adopt and implement a reopening schedule that commences immediately and will phase in the allowable amount of increased kilowatthours over a period of not less than three years, and not more than five years, raising the allowable limit of kilowatthours supplied by other providers in each electrical corporation’s distribution service territory from the number of kilowatthours provided by other providers as of the effective date of this section, to the maximum allowable annual limit for that electrical corporation’s distribution service territory. The commission shall review and, if appropriate, modify its currently effective rules governing direct transactions, but that review shall not delay the start of the phase-in schedule.

(2) The commission shall adopt and implement a second direct transactions reopening schedule that commences January 1, 2016, and phases in new direct transactions for individual retail nonresidential end-use customers over a period of not more than

1 three years, raising the allowable limit of kilowatthours that can  
2 be supplied by other providers in each electrical corporation's  
3 distribution service territory to ~~two times~~ *8,000 gigawatt hours*  
4 *above* the amount determined by the commission for the first  
5 phase-in period. Not less than 51 percent of the new direct  
6 transactions shall be for electricity products from eligible renewable  
7 energy resources. For purposes of this section, "eligible renewable  
8 energy resource" has the same meaning as in the California  
9 Renewables Portfolio Standard Program (Article 16 (commencing  
10 with Section 399.11)).

11 (c) Once the commission has authorized additional direct  
12 transactions pursuant to subdivision (b), it shall do both of the  
13 following:

14 (1) Ensure that other providers are subject to the same  
15 requirements that are applicable to the state's three largest electrical  
16 corporations under any programs or rules adopted by the  
17 commission to implement the resource adequacy provisions of  
18 Section 380, the renewables portfolio standard provisions of Article  
19 16 (commencing with Section 399.11), and the requirements for  
20 the electricity sector adopted by the State Air Resources Board  
21 pursuant to the California Global Warming Solutions Act of 2006  
22 (Division 25.5 (commencing with Section 38500) of the Health  
23 and Safety Code). This requirement applies notwithstanding any  
24 prior decision of the commission to the contrary.

25 (2) (A) Ensure that, in the event that the commission authorizes,  
26 in the situation of a contract with a third party, or orders, in the  
27 situation of utility-owned generation, an electrical corporation to  
28 obtain generation resources that the commission determines are  
29 needed to meet system or local area reliability needs for the benefit  
30 of all customers in the electrical corporation's distribution service  
31 territory, the net capacity costs of those generation resources are  
32 allocated on a fully nonbypassable basis consistent with departing  
33 load provisions as determined by the commission, to all of the  
34 following:

35 (i) Bundled service customers of the electrical corporation.

36 (ii) Customers that purchase electricity through a direct  
37 transaction with other providers.

38 (iii) Customers of community choice aggregators.

39 (B) If the commission authorizes or orders an electrical  
40 corporation to obtain generation resources pursuant to subparagraph

1 (A), the commission shall ensure that those resources meet a system  
2 or local reliability need in a manner that benefits all customers of  
3 the electrical corporation. The commission shall allocate the costs  
4 of those generation resources to ratepayers in a manner that is fair  
5 and equitable to all customers, whether they receive electric service  
6 from the electrical corporation, a community choice aggregator,  
7 or an electric service provider.

8 (C) The resource adequacy benefits of generation resources  
9 acquired by an electrical corporation pursuant to subparagraph (A)  
10 shall be allocated to all customers who pay their net capacity costs.  
11 Net capacity costs shall be determined by subtracting the energy  
12 and ancillary services value of the resource from the total costs  
13 paid by the electrical corporation pursuant to a contract with a  
14 third party or the annual revenue requirement for the resource if  
15 the electrical corporation directly owns the resource. An energy  
16 auction shall not be required as a condition for applying this  
17 allocation, but may be allowed as a means to establish the energy  
18 and ancillary services value of the resource for purposes of  
19 determining the net costs of capacity to be recovered from  
20 customers pursuant to this paragraph, and the allocation of the net  
21 capacity costs of contracts with third parties shall be allowed for  
22 the terms of those contracts.

23 (D) It is the intent of the Legislature, in enacting this paragraph,  
24 to provide additional guidance to the commission with respect to  
25 the implementation of subdivision (g) of Section 380, as well as  
26 to ensure that the customers to whom the net costs and benefits of  
27 capacity are allocated are not required to pay for the cost of  
28 electricity they do not consume.

29 (d) (1) If the commission approves a centralized resource  
30 adequacy mechanism pursuant to subdivisions (h) and (i) of Section  
31 380, upon the implementation of the centralized resource adequacy  
32 mechanism the requirements of paragraph (2) of subdivision (c)  
33 shall be suspended. If the commission later orders that electrical  
34 corporations cease procuring capacity through a centralized  
35 resource adequacy mechanism, the requirements of paragraph (2)  
36 of subdivision (c) shall again apply.

37 (2) If the use of a centralized resource adequacy mechanism is  
38 authorized by the commission and has been implemented as set  
39 forth in paragraph (1), the net capacity costs of generation resources  
40 that the commission determines are required to meet urgent system

1 or urgent local grid reliability needs, and that the commission  
2 authorizes to be procured outside of the Section 380 or ~~Section~~  
3 454.5 processes, shall be recovered according to the provisions of  
4 paragraph (2) of subdivision (c).

5 (3) Nothing in this subdivision supplants the resource adequacy  
6 requirements of Section 380 or the resource procurement  
7 procedures established in Section 454.5.

8 (e) The commission may report to the Legislature on the efficacy  
9 of authorizing individual retail end-use residential customers to  
10 enter into direct transactions, including appropriate consumer  
11 protections.

12 (f) An electrical corporation shall continue to provide direct  
13 access customers with support functions, including, but not limited  
14 to, billing, customer service, call centers, support services, and  
15 line clearance tree trimming, through its own employees, except  
16 that construction of distribution system equipment and line  
17 clearance tree trimming may be performed pursuant to contracts  
18 between the electrical corporation and another entity.

19 SEC. 3. Section 395.5 is added to the Public Utilities Code, to  
20 read:

21 395.5. Beginning January 1, 2016, no electric service provider  
22 shall offer consolidated billing.

23 SEC. 4. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.